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Supreme Court, U.S.
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No. 86-1097

In The Supreme Court

OF THE

United States

October Term, 1986

APOLLO OF THE OZARKS, INC.,
AND RED ROCKET FIREWORKS,
Petitioners,

vs.

SPIRO GIOTIS AND MALCOLM GILLESPIE,
Respondents.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents oppose the grant of a writ of certiorari in this matter by arguing that Wisconsin was within the expected scope of distribution of the distributor, Capitol Fireworks Company ("Capitol"). In support of their argument, Respondents state that Petitioners "do not disagree" with the Seventh Circuit's finding that "Capitol purposefully directed its sales efforts to Wisconsin." Brief in Opposition 6.

Petitioners emphatically do disagree with any suggestion that Capitol purposefully directed its sales efforts toward Wisconsin, or that Wisconsin was in any way within Capitol's scope of distribution.

Respondents cannot support their contention. "There is no evidence in the record that even a single item manufactured or sold by Apollo or Red Rocket has

ever been sold in Wisconsin at any stage of distribution." Petition 13. The District Court expressly found that no Apollo products were purchased in Wisconsin. Petition App. B-13. The District Court specifically found that Red Rocket was not authorized or licensed to do business in Wisconsin and had not solicited sales in Wisconsin. Petition App. C-3.

There is a corresponding absence of evidence that even a single item sold by Capitol has ever been sold in Wisconsin. No party has suggested that Capitol has ever sold any product distributed by someone other than Apollo or Red Rocket in Wisconsin or to a Wisconsin resident.

Respondents rely on Capitol's advertisement in the American Rifleman, a nationally-distributed magazine, to show that Wisconsin is within Capitol's scope

of distribution. However, it is undisputed that Capitol's advertisements stated that Capitol would not sell fireworks where prohibited by law, and it is undisputed that Wisconsin prohibits fireworks. An advertisement so limited can hardly be said to constitute a sales effort purposefully directed toward Wisconsin, or calculated to reach buyers in Wisconsin.

Respondents admit that Petitioners would not be amenable to suit in Wisconsin if they sold to distributors with a limited sales territory, excluding Wisconsin. Brief in Opposition 21. That is precisely the situation established by the evidence in this case. Wisconsin cannot be within Capitol's scope of distribution for the simple reason that no product sold by Capitol has ever been sold in Wisconsin.

Petitioners have received economic benefits from Capitol's sale of their products -- in Minnesota, and in other states, but not in Wisconsin. Petitioners did not benefit from sales in Wisconsin because there were no sales in Wisconsin. The only factor connecting Petitioners with Wisconsin is the use of Petitioners' product in Wisconsin. To uphold jurisdiction based on this factor alone is directly in conflict with World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

Respectfully submitted,

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